

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996)	CC Docket No. 96-128
)	
)	

PETITION FOR WAIVER

Pursuant to §§ 1.3 and 1.46 of the Federal Communications Commission's ("Commission") rules,¹ Network Enhanced Telecom, LLP d/b/a NetworkIP ("NetworkIP"), through its counsel, hereby respectfully requests a limited waiver of the payphone call tracking system audit and filing requirements as set forth in the Commission's October 3, 2003 Order and § 64.1320 of the Commission's rules.² Specifically, NetworkIP requests a limited waiver and extension of time for three (3) months until October 1, 2004, in which to complete the payphone system audit and file the required audit report with the Commission, with applicable payphone service providers ("PSPs"), and with interexchange carriers ("IXCs"). As part of this request, NetworkIP also seeks a waiver of any late-filed penalties that may otherwise apply. In support of its request, NetworkIP shows the following.

I. BACKGROUND

NetworkIP is headquartered in Longview, Texas and provides a full range of voice and data offerings, including pre-paid calling card and long distance services via its own switching equipment and interexchange services purchased from facilities-based IXCs. As a Completing Carrier under § 64.1320 of the Commission's rules, NetworkIP is required to undergo an audit of its call tracking system by an independent third party auditor and file a System Audit Report with

¹ 47 C.F.R. § 1.3; 47 C.F.R. § 1.46.

² *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 18 FCC Rcd 199975 (2003) (hereinafter the "Payphone Audit Order").

the Commission, with each PSP for whom NetworkIP completes payphone calls, and with each facilities-based IXC from which NetworkIP receives payphone calls.³ The initial System Audit Report is due on July 1, 2004.⁴

As discussed more fully herein, due to certain operational constraints, including financial and staffing requirements in connection with the annual independent audit of NetworkIP's financial operations, the potential costs of the Commission's audit requirements, and the timeframe for completing an agreement with a payphone compensation clearinghouse, NetworkIP is unable to complete the audit by July 1, 2004. NetworkIP, however, has taken reasonable steps to ensure that PSPs receive compensation for payphone calls completed by NetworkIP beginning July 1, 2004.

II. DISCUSSION

The Commission may waive any provision of its rules when "good cause" is shown.⁵ Good cause is shown where special circumstances merit a waiver of the rule and such circumstances support a finding that granting a waiver will (i) serve the public interest and (ii) will not undermine the underlying policy objectives of the rule in question.⁶ Good cause exists for granting NetworkIP the three (3) month waiver requested herein.

A. Special Circumstances Warrant a Limited Waiver of the Audit Requirement.

Special circumstances support the Commission's grant of a limited waiver from the requirement that NetworkIP complete the payphone call tracking system audit and submit the System Audit Report to the Commission (and applicable PSPs and IXCs) by July 1, 2004.

³ 47 C.F.R. § 64.1320(b).

⁴ See *Public Notice*, "New Payphone Compensation Rules Will Go Into Effect on July 1, 2004", CC Docket No. 96-128 (released May 11, 2004).

⁵ "Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown." 47 C.F.R. § 1.3.

⁶ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

NetworkIP's limited internal personnel resources are currently directed towards assisting NetworkIP's independent financial auditors with the annual audit of the company's financial operations. Although the annual financial audits – like the required call tracking system audits – are conducted by independent auditors, significant internal resources must also be devoted to an independent third party audit. NetworkIP has not been able to reallocate resources to the completion of the call tracking system audit while assisting its independent auditors with the ongoing financial audit. Moreover, NetworkIP does not anticipate being able to devote sufficient internal resources to the call tracking system audit until after its ongoing financial audit is complete. NetworkIP currently anticipates that the earliest date that the ongoing financial audit will be completed is the end of July 2004.

Similarly, completion of the third party audit of NetworkIP's call tracking system will require NetworkIP to expend significant financial resources at the same time substantial expenditures are required in connection with its ongoing financial audit. NetworkIP has obtained estimates from several independent auditors that indicate that completion of the call tracking system audit may cost close to \$30,000 or possibly more. At the same time, the ongoing financial audit will cost approximately \$85,000. The cost of the call tracking system audit while bearing the cost of its ongoing financial audit places an unexpected financial hardship on NetworkIP.

Finally, NetworkIP was unable to finalize arrangements with its payphone compensation clearinghouse provider to assist NetworkIP in fulfillment of its payphone compensation obligations until the effective date of the Commission's call tracking system and audit requirements was known. Until the effective date, NetworkIP will continue to provide call-detail records ("CDRs") to the first underlying IXC to determine the compensable payphone calls

completed from NetworkIP's switching facilities pursuant to the Commission's interim rules and its agreements with facilities-based IXCs.⁷

The publication of the Payphone Audit Order's rules in the Federal Register provided that the new rules would be effective on the first day of the first calendar-year quarter following the Commission's receipt of Office of Management and Budget ("OMB") approval of paperwork collection requirements.⁸ On May 11, 2004, the Commission issued its Public Notice stating that OMB approval was obtained May 5, 2004 and that the effective date of its new payphone compensation rules would be July 1, 2004.⁹ Thus, until recently NetworkIP was unable to finalize a key component of its system to ensure that PSPs are compensated for every completed payphone call after the effective date of the new rules. However, NetworkIP has now executed an agreement with clearinghouse provider Billing Concepts, Inc. ("BCI") that will ensure that NetworkIP can successfully transition from the prior compensation rules (in which facilities-based IXCs tracked and paid payphone compensation) to the new compensation rules.¹⁰

B. Granting NetworkIP's Waiver Request is in the Public Interest.

The granting of NetworkIP's limited waiver request is in the public interest. Specifically, providing NetworkIP with an additional three (3) months to obtain an independent audit of its call tracking system will allow NetworkIP to complete its annual financial audit and then better devote its limited resources to conducting the required system audit. In turn, this will allow the Commission to better ensure that NetworkIP's system is audited properly and that PSPs are compensated for each completed payphone call.

⁷ NetworkIP, like many carriers, does not possess the internal resources to track payphone calls and reconcile payphone compensation on a nationwide basis without the assistance of a clearinghouse. The Commission has noted that "clearinghouses serve an important role in [the] compilation, payment and disbursement" of payphone compensation. Payphone Audit Order, 18 FCC Rcd 199975 at note 116.

⁸ 68 Fed. Reg. 62751-01 (Nov. 6, 2003).

⁹ See note 4 *supra*.

¹⁰ As discussed herein, NetworkIP submits that its agreement with BCI will ensure that grant of the requested waiver will not adversely affect any other party.

C. Granting NetworkIP's Waiver Request Is Also Consistent with the Policy Objectives Underlying the Audit Requirement.

Granting NetworkIP's limited request for a three (3) month waiver is also consistent with the Commission's policy reasons for adopting the audit requirement. That is, § 276 of the Communications Act's requirement that PSPs are to be compensated for each and every completed payphone call.

By adopting the audit requirements, the Commission sought to ensure that carriers have developed and implemented the systems and processes needed to track each and every compensable payphone call. As discussed above, by permitting NetworkIP additional time to complete the call tracking system audit, the Commission will provide NetworkIP the opportunity to focus its limited resources on the audit. Moreover, extending the initial audit deadline for three (3) months will not have an adverse impact on any party because NetworkIP has already implemented its call tracking system to ensure that PSPs are compensated for completed payphone calls during the three (3) month waiver. To that end, as discussed at II.A above, NetworkIP has executed an agreement with payphone compensation clearinghouse provider, BCI. Beginning July 1, 2004, NetworkIP will submit its CDRs to BCI who will in turn reconcile NetworkIP's CDRs with payphone call data to determine which calls are compensable payphone calls. BCI will remit the required payphone compensation to the appropriate PSPs on NetworkIP's behalf. Thus, during the limited three (3) month waiver (*i.e.*, the first quarter during which the new rules will be effective) payphone calls will still be tracked and PSPs will be compensated for completed payphone calls. Therefore, NetworkIP respectfully requests that the Commission extend the initial audit deadline by three (3) months, or until October 1, 2004.

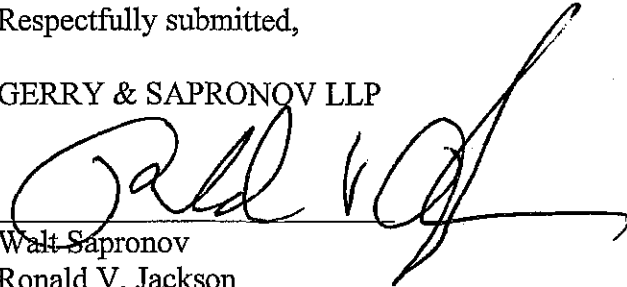
III. CONCLUSION

WHEREFORE, for the foregoing reasons, Network Enhanced Telecom, LLP d/b/a NetworkIP respectfully requests that the Commission:

- (i) Grant this Petition for Waiver in all respects, including a limited waiver of the audit and filing requirements of 47 C.F.R. § 64.1320 for three (3) months from July 1, 2004 until October 1, 2004;
- (ii) Waive any applicable late-filed penalties; and
- (iii) Grant such other and additional relief that the Commission may deem just and proper.

Respectfully submitted,

GERRY & SAPRONOV LLP

A large, stylized handwritten signature in black ink, appearing to read 'Walt Sapronov', is written over a horizontal line.

Walt Sapronov
Ronald V. Jackson
Counsel for Network Enhanced Telecom, LLP

Three Ravinia Drive
Suite 1455
Atlanta, Georgia 30346
Telephone: 770-399-9100
Facsimile: 770-395-0505
wsapronov@gstelecomlaw.com
rvjackson@gstelecomlaw.com

FEDERAL COMMUNICATIONS COMMISSION

In the Matter of The Pay Telephone
Reclassification and Compensation Provisions
Of the Telecommunications Act of 1996

)
)
)

CC Docket No. 96-128

STATE OF TEXAS

COUNTY OF GREGG

AFFIDAVIT OF TONI VAN BURKLEO

Personally appeared before the undersigned, an officer duly authorized to administer oaths, Toni Van Burkleo, who first being duly sworn, deposes and says that she is Chief Financial Officer of Network Enhanced Telecom, LLP d/b/a NetworkIP. Petitioner in this Petition for Waiver, that she has read the same and knows the contents thereof, and that the statements made herein are true to the best of her knowledge and belief.

Further, affiant sayeth not.



Toni Van Burkleo
Chief Financial Officer
Network Enhanced Telecom, LLP

Sworn and subscribed before me this 24th day of June, 2004.



Notary Public

My Commission Expires: MARCH 30, 2008

(Seal)

